IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

FAO.No. 292 of 2006()

AGAINST THE ORDER DATED 16/10/2006 IN IA. 1283 /2006 IN OS.116/2006 of PRINCIPAL SUB COURT,KOCHI

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APPELLANTS/PETITIONERS/PLAINTIFFS

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1. MR.FRANCIS, AGED 79 YEARS,
   S/O.JOSEPH, KADUNGAMPARAMBIL HOUSE,
   CHERIYAKADAVU, KANNAMALLY P.O.,
   NOW RESIDING AT KANNAMALLY P.O.,
   KOCHI-682 008.

2. MR.GEORGE, AGED 62 YEARS,
   S/O.JOSEPH KAITHAVELIKAKATHU HOUSE,
   MUNDANVELI P.O., KOCHI-682 507.

3. MR.BONEY JOSEPH, AGED 52 YEARS,
   NERAKKASSERIYIL HOUSE, MANASSERY KETTIPARAMBU,
   P.O.KANNAMALLY, KOCHI-682 008.

BY ADV. SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN

RESPONDENTS: DEFENDANTS

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1. M/S.ST.LOUIS SCHOOL KURI FUND,
   P.O.MUNDANVELI, KOCHI-682 507,
   REP. BY ITS EX-OFFICIO PRESIDENT VIKAR OF
   ST.LOUIS CHURCH, MUNDANVELI P.O.,
   KOCHI-682 507.

2. MR.K.A.FRANCIS, AGED ABOUT 82 YEARS,
   S/O.AUGUSTINE, KATTIPARAMBIL HOUSE,
   MUNDANVELI P.O., KOCHI-682 507.

3. MR.JOSE IGNACIOUS,
   AGED ABOUT 45 YEARS, S/O.JACOB,
   ADVOCATE, KADAVIPARAMBIL HOUSE,
   MANASSERY, MUNDANVELI P.O., KOCHI-682 507.

4. MR.GEORGE JAMES, AGED ABOUT 55 YEARS,
   S/O.JAMES, ADVOCATE, VATTATHARA,
   MUNDANVELI P.O., KOCHI-682 507.

5. MR.BABU, AGED ABOUT 45 YEARS,
S/O.JOSEPH, KADAVIPARAMBIL HOUSE,
MUNDANVELI P.O., KOCHI-682 507.

BY ADV. SMT.MONCY JACOB
SRI.JOSE JOSEPH ARAYAKUNNEL

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

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F.A.O. No.292 of 2006

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Dated this the 18th day of October, 2007.

JUDGMENT

The plaintiffs in O.S. No.116/2006 on the file of the Subordinate Judge's Court, Kochi are the appellants. The plaintiffs filed I.A. 1244/2006 seeking permission to file a complaint under Section 92 of CPC. The trial court granted leave without notice to the respondents. The plaintiffs filed the suit and filed I.A. 1283/2006 under Order 39 Rule 1and 2 for an order of injunction. The trial court ordered notice. The respondents entered appearance and filed their counter to the application for injunction. The court below heard both sides and dismissed the application. Challenging that order this F.A.O. is filed.

2. The suit is for framing of a scheme for St.Louis School Kuri Fund and for conducting election to the office bearers of the Fund, convening general body meeting of the members of the Fund and for getting possession of the assets of the Fund etc. It was averred that there is no written byelaw or scheme for the management and administration of the Fund. It was averred that the respondents are in management of the Fund and its assets and they are treating the assets of the Fund as their personal property. No

general body meeting or election was convened. The respondents are misappropriating the income from the property and not maintaining any books of accounts. It was also averred that the respondents are trying to alienate the properties. It was averred that their valuable properties are going to be alienated. The appellant filed I.A. 1283/2006 under Order XXXIX Rules 1 and 2 for an order of temporary injunction. In that petition for injunction also the very same averments were made.

3. The first respondent who is the Vicar of the St.Louis church filed counter contending that he took charge as Ex-Officio President of this Fund on 6.6.2006. Till then the former Vicar of the Church was the Ex-Officio President. He had asserted that the St.Louis School Kuri Fund is a private kuri which came into existence as per a kuri agreement dated 1.8.1904. It was contended that there were three promoters and three advisors. The kuri was started in the year 1904 and ended in the year 1908. The Fund was started for the Mundamveli St.Louis School which was later given to the Cochin Diocese. It was also contended that the kuri Fund obtained the kanam right over item No.1 from Kochi Thirumala Devaswom. It was

having an extent of 100 acres and finally the Fund was only having 9.63 acres of paddy land, the balance was given to Varamdars and sub-tenants. It was also contended that plaint B schedule property was purchased by the Fund in the name of the then Vicar of the church. The heirs of subscribers are not admitted in the management and administration of the properties of the Fund. The managing committee is having full power of ownership and administration with right of alienation over the properties of the Fund. Nobody other than the committee has a right or interest in the administration or management of the properties of the Fund. The first petitioner-plaintiff is not a member of the Parish of St.Louis Church. He is member of some other Parish. The second petitioner is not a member of the Fund. It was also contended that the members of the Parish were of the opinion that a Parish hall is to be constructed for the welfare of the community and when the matter was informed to the members of the Fund, they offered to help the Parish by constructing a Parish hall. So a decision was taken to sell 9.63 acres of land and using that amount it was proposed to construct the Parish hall. It was also contended that petitioners 1 and 2 are constantly

harassing the management of the Fund as well as others by filing false and vexatious criminal complaints. The third respondent-Secretary also filed a counter affidavit contending that a private kuri was established and the petitioners have no locus standi and members of the Fund have every right to deal with the properties. He had raised contentions identical to that of the contentions raised by the first respondent-Vicar of the church. The trial court considered the issue and found that the Fund is not a charitable organisation. I do not think it is necessary to consider that issue at this stage. The question to be decided is even if it is a public trust as contended by the respondents whether they are entitled to an order of injunction. The fund was started in the year 1904 for conducting kuri. It conducted only one kuri and that kuri was over in 1908. A copy of the kuri variola was made available to me which shows that the intention was to raise the fund to start the school and the school was started. That school was given to the Diocese of Cochin and the Diocese of Cochin is in management of the school. The affidavit filed by the Vicar shows that the property now in the possession of Fund is not fit for cultivation and the members of the Parish

were of the opinion that a Parish hall is to be constructed and for that purpose, the properties were sold. So, I am of the view that the balance of convenience is in favour of the respondents to proceed with the construction of the Parish hall rather than preventing them from making such a construction. Admittedly the properties were already sold. So the order passed by the court below dismissing the injunction application is perfectly correct and does not call for any interference. The impugned order is only to be confirmed. In the result the F.A.O. is dismissed.

K.PADMANABHAN NAIR
Judge

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